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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY:
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTUAN WILLIAMS,
CDCR #H-16685,

Plaintiff,

vs.

G.J. JANDA, W.J. PRICE,
R. JOHNSON, ANAYA,
NELSON;

Defendants.

Civil No. 07-1745 WQH (CAB)

ORDER:

(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING \$2.44 INITIAL
PARTIAL FILING FEE,
GARNISHING \$347.56 BALANCE
FROM PRISONER'S TRUST
ACCOUNT [Doc. No. 4];

AND

(2) DISMISSING COMPLAINT
FOR FAILURE TO STATE A
CLAIM PURSUANT TO 28 U.S.C.
§§ 1915(e)(2) AND 1915A(b)

Antuan Williams, a state prisoner currently incarcerated at Centinela State Prison located in Imperial, California, and proceeding pro se, has submitted a civil action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was denied due process at his disciplinary hearing while he was incarcerated at Calipatria State Prison. (*See* Compl. at 3-4.) In addition, Plaintiff alleges that Calipatria prison officials retaliated against him for exercising his First Amendment rights. (*Id.* at 5.)

1 In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant
2 to 28 U.S.C. § 1915(a).

3 **I. Motion to Proceed IFP [Doc. No. 4]**

4 Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a
5 district court of the United States, except an application for writ of habeas corpus, must pay a
6 filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to
7 prepay the entire fee only if the party is granted leave to proceed IFP pursuant to 28 U.S.C.
8 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave
9 to proceed IFP however, remain obligated to pay the entire fee in installments, regardless of
10 whether the action is ultimately dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

11 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a
12 prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account
13 statement (or institutional equivalent) for the prisoner for the six-month period immediately
14 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2). From the certified trust account
15 statement, the Court must assess an initial payment of 20% of (a) the average monthly deposits
16 in the account for the past six months, or (b) the average monthly balance in the account for the
17 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
18 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). That institution having custody of the prisoner must
19 collect subsequent payments, assessed at 20% of the preceding month's income, in any month
20 in which the prisoner's account exceeds \$10, and forward those payments to the Court until the
21 entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

22 The Court finds that Plaintiff has submitted a certified copy of his trust account statement
23 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement
24 shows an average monthly balance of \$12.20, average monthly deposits of \$8.80 and a current
25 available balance of \$5.74. Based on this financial information, the Court GRANTS Plaintiff's
26 Motion to Proceed IFP [Doc. No. 4] and assesses an initial partial filing fee of \$2.44 pursuant
27 to 28 U.S.C. § 1915(b)(1). However, the Secretary of the California Department of Corrections
28 and Rehabilitation ("CDCR"), or his designee, shall collect this initial fee *only if sufficient funds*

1 in Plaintiff's account are available at the time this Order is executed pursuant to the directions
 2 set forth below. See 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be
 3 prohibited from bringing a civil action or appealing a civil action or criminal judgment for the
 4 reason that the prisoner has no assets and no means by which to pay the initial partial filing
 5 fee."); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (finding that 28 U.S.C.
 6 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely
 7 on a "failure to pay ... due to the lack of funds available to him when payment is ordered."). The
 8 remaining balance shall be collected and forwarded to the Clerk of the Court pursuant to the
 9 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

10 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

11 The PLRA also obligates the Court to review complaints filed by all persons proceeding
 12 IFP and by those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused
 13 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 14 conditions of parole, probation, pretrial release, or diversionary program," "as soon as
 15 practicable after docketing." See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
 16 provisions, the Court must sua sponte dismiss any prisoner and all other IFP complaints, or any
 17 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages
 18 from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*,
 19 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d
 20 443, 446 (9th Cir. 2000) (§ 1915A); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
 21 Cir. 1998) (discussing § 1915A). "[W]hen determining whether a complaint states a claim, a
 22 court must accept as true all allegations of material fact and must construe those facts in the light
 23 most favorable to the plaintiff." *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that
 24 § 1915(e)(2) "parallels the language of Federal Rule of Civil Procedure 12(b)(6)").

25 Here, while the Court finds that Plaintiff's retaliation claims survive the sua sponte
 26 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), his allegations pertaining to his
 27 Fourteenth Amendment due process claims are insufficient to state a claim upon which relief can
 28 be granted.

1 In his Complaint, Plaintiff alleges that Calipatria prison officials violated his due process
2 rights during his disciplinary hearing. (See Compl. at 3.) “The requirements of procedural due
3 process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s
4 protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). State
5 statutes and prison regulations may grant prisoners liberty interests sufficient to invoke due
6 process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976). However, the Supreme
7 Court has significantly limited the instances in which due process can be invoked. Pursuant to
8 *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can show a liberty interest under the
9 Due Process Clause of the Fourteenth Amendment only if he alleges a change in confinement
10 that imposes an “atypical and significant hardship . . . in relation to the ordinary incidents of
11 prison life.” *Id.* at 484 (citations omitted); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir.
12 1997).

13 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
14 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
15 consequences of a disciplinary hearing which show “the type of atypical, significant deprivation
16 [that] might conceivably create a liberty interest.” *Id.* at 486. In *Sandin*, the Supreme Court
17 considered three factors in determining whether the plaintiff possessed a liberty interest in
18 avoiding disciplinary segregation: (1) the disciplinary versus discretionary nature of the
19 segregation; (2) the restricted conditions of the prisoner’s confinement and whether they
20 amounted to a “major disruption in his environment” when compared to those shared by
21 prisoners in the general population; and (3) the possibility of whether the prisoner’s sentence was
22 lengthened by his restricted custody. *Id.* at 486-87.

23 Here, Plaintiff has failed to allege how his disciplinary hearing created “a major
24 disruption” in his environment, or that the length of his sentence was affected. *See id.* Thus,
25 without more, the Court finds that Plaintiff’s claims fall “within the range of confinement to be
26 normally expected” by prison inmates “in relation to the ordinary incidents of prison life,” and
27 as such, are insufficient to state a due process claim upon which relief can be granted. *Id.* at
28 486-87.

1 In addition, Plaintiff also alleges that prison officials deprived him of his personal
 2 property. To the extent that Plaintiff wishes to bring a claim relating to the negligent or
 3 unauthorized deprivation of his property, such a claim will not state a federal cause of action
 4 under § 1983 if the plaintiff has an adequate post-deprivation state remedy. *See Hudson v.*
 5 *Palmer*, 468 U.S. 517, 533 (1984). The California Tort Claims Act ("CTCA") provides an
 6 adequate post-deprivation state remedy for the random and unauthorized taking of property.
 7 *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Thus, Plaintiff has an adequate state
 8 post-deprivation remedy and his claims relating to the taking of his property are not cognizable
 9 in this § 1983 action, and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and
 10 1915A(b)(1).

11 Accordingly, the Court finds that Plaintiff's Complaint fails to state a section 1983 claim
 12 upon which relief may be granted, and is therefore subject to dismissal pursuant to 28 U.S.C.
 13 §§ 1915(e)(2)(b) & 1915A(b). However, the Court will provide Plaintiff with an opportunity
 14 to amend his pleading in light of the standards set forth above. *See Lopez*, 203 F.3d at 1130-31.

15 III. Conclusion and Order

16 Good cause appearing, **IT IS HEREBY ORDERED** that:

17 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 4]
 18 is **GRANTED**.

19 2. The Secretary of the California Department of Corrections and Rehabilitation
 20 ("CDCR"), or his designee, is ordered to collect the \$2.44 initial partial filing fee assessed
 21 by this Order and forward that amount to the Clerk of Court, *if those funds are available at*
 22 *the time this Order is executed*. THE INITIAL PARTIAL FILING FEE SHALL BE CLEARLY
 23 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

24 3. The Secretary of the CDCR, or his designee, is ordered to collect from Plaintiff's
 25 prison trust account the \$347.56 balance of the filing fee owed in this case by collecting monthly
 26 payments from Plaintiff's prison trust account in an amount equal to twenty percent (20%) of
 27 the preceding month's income credited to the account and forward payments to the Clerk of the
 28 Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C.

1 § 1915(b)(2). ALL MONTHLY PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THAT
2 NAME AND NUMBER ASSIGNED TO THIS ACTION.

3 4. The Clerk of the Court is directed to serve a copy of this Order on James E. Tilton,
4 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
5 Sacramento, California 95814.


6 **IT IS FURTHER ORDERED** that:

7 5. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
8 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave
9 from the date this Order is stamped "Filed" in which to file a First Amended Complaint which
10 cures all the deficiencies of pleading noted above. Plaintiff's Amended Complaint must be
11 complete in itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1.
12 Defendants not named and all claims not re-alleged in the Amended Complaint will be deemed
13 to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if
14 Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted, it may
15 be dismissed without further leave to amend and may hereafter be counted as a "strike" under
16 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

17 6. The Clerk of the Court is directed to mail a form § 1983 complaint to Plaintiff.

18 **IT IS SO ORDERED.**

19 DATED: 12/5/07



20 **HON. WILLIAM Q. HAYES**
21 United States District Judge
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